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| 10/598,364 | 11/27/2006 | Guenter Glunk | D4700-00427 | 3192 |

8933 7590 12/08/2010
DUANE MORRIS LLP - Philadelphia
IP DEPARTMENT
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103-4196

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| EXAMINER |
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BAKER, LORI LYNN

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| ART UNIT | PAPER NUMBER |
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3751

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12/08/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/598,364 | Applicant(s) GLUNK ET AL. | |
| | Examiner Lori Baker | Art Unit 3751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 7-15 is/are rejected.
- 7) ☒ Claim(s) 4,5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Drawings

1. The drawings were received on 9/28/10. These drawings are approved.

Claim Objections

2. Claims 4-5 are objected to because of the following informalities: they depend from a cancelled claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 4, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Malasorti (WO 03/066975). The rejection from the previous office action is incorporated herein. Additionally, the rear wall, a flat profile 9, (see figure 1) provides space for the fitting (figure 6), and as best understood by the examiner, the fitting is covered by the profile with the exception of the handle which "activates" from the front of the profile, i.e., extends into the profile. Figure one also shows a shower head 3 for water delivery. Applicant argues that *there is no teaching or suggestion of a concealed box in the wall and a profile with a*

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surface on a back wall through which the box is activated. The examiner does not find this argument persuasive. As suggested in figure 1, Malasorti has a rear wall to which the fitting is mounted and a shower head on the wall of the profile for water delivery. As taught in figure 6, a box 13, is concealed in the wall. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *and the water is effected to one or more shower heads on the outer wall of the profile or coupled on the outside of the profile via a hose*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malasorti as applied to claim 1 above. The rejection from the previous office action is incorporated herein. Applicant argues the number of concealed fittings. The Applicant should note that duplicating the components of a prior art device is a design consideration within the skill of the art. Duplication of parts has been

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held patentably insignificant absent a showing of a new or unexpected result.

See MPEP 2144.04(VI)(B). See arguments above.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malasorti as applied to claim 1 above and further in view of Wilson. The rejection from the previous office action is incorporated herein. See arguments above.

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malasorti as applied to claim 1 above and further in view of Neher Bad. The rejection from the previous office action is incorporated herein. See arguments above.

9. Claims 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malasorti as applied to claim 1 above and further in view of Keramische Werke. The rejection from the previous office action is incorporated herein. See arguments above.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is

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filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Baker whose telephone number is (571) 272-4971. The examiner can normally be reached on M-F, 8am-5pm. For interview requests, please contact the examiner directly and submit PTO Form 413A.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lori Baker/
Primary Examiner, Art Unit 3751